

APPENDIX

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

*In the Supreme Court of the United States*

OCTOBER TERM, 1978

No. 78-437

JOSEPH A. CALIFANO, SECRETARY OF HEALTH,  
EDUCATION AND WELFARE,

*Appellant*

—v.—

CINDY WESTCOTT, ET AL.

No. 78-689

ALEXANDER SHARP II, COMMISSIONER, MASSACHUSETTS  
DEPARTMENT OF PUBLIC WELFARE,

*Appellant*

—v.—

CINDY WESTCOTT, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

APPEALS DOCKETED SEPTEMBER 14, 1978

(No. 78-437) AND OCTOBER 23, 1978 (No. 78-689).

PROBABLE JURISDICTION NOTED DECEMBER 11, 1978.

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## DOCKET ENTRIES

Date	
1977	
Jan. 24	Complaint FILED
Feb. 10	Plaintiff's memorandum in support of motion for preliminary injunction FILED
Feb. 10	Ps' motion for a preliminary injunction FILED
Feb. 15	Federal Dft's opposition to Ps' motion for preliminary injunction, filed c/s.
Feb. 28	Plaintiff's amended complaint filed cs
Feb. 28	Stipulation of plaintiffs and defendant Sharp
Mar. 17	Answer of Alexander E. Sharp II to amended complaint FILED CS.
Apr. 21	Answer of Federal defendant to amended complaint, FILED. cs.
June 8	Ps' motion for partial summary judgment FILED CS
June 8	Affidavit of Cindy and William Westcott FILED CS
June 8	Affidavit of Susan and John Westwood FILED CS.
June 8	Plaintiffs' motion for a class action order FILED CS.
June 8	Plaintiffs' memorandum in support of motion for partial summary judgment FILED CS.
June 22	Deft Sharp's notice of opposition pursuant to Local Rule 12(a) (2) to plaintiffs' motion for partial summary judgment FILED CS.
June 22	Deft Sharp's notice of opposition pursuant to Local Rule 12(a) (2) to plaintiffs' motion for a class action order FILED CS.
Aug. 4	Points and authorities in opposition to plaintiffs' motion for a class action order FILED CS

## Date

1977

Aug. 24 Cross-motion for summary judgment, FILED. cs.  
(Federal deft)

Points and authorities in opposition to pltfs' motion for partial summary judgment and in support of deft's cross-motion for summary judgment, FILED. cs.

Sep. 13 Stipulation of Ps and deft. Sharp. FILED

Oct 21 Deft Sharps' memorandum in support of his opposition to plaintiffs' motion for partial summary judgment FILED CS

Dec 29 FREEDMAN, J. Hearing on cross motions for summary judgment; arguments; 30 days to file Finding of stipulated facts and class action issue; TAKEN UNDER ADVISEMENT. Motion for leave to allow Mary R. Mannix to appear and practice before this court, filed and allowed.

1978

Jan 27 Defts' memorandum filed cs.

Jan 30 Stipulation filed

Jan 30 Ps' proposed findings with respect to the Class FILED CS

Jan 30 Ps' memorandum in support of plaintiffs' proposed findings with respect to the class and in response to defts' opposition to class certification FILED CS

Mar 8 Ps' supplemental memorandum in support of pltfs' proposed findings with respect to the class and in response to defts' opposition to class certification FILED CS

Apr 20 FREEDMAN, J. OPINION ENTERED. cc/cl, West, MCAIR, Mass Lawyers

## Date

1978

Apr 20 FREEDMAN, J. ORDER ENTERED. . . . for the reasons stated in the opinion entered this date, the plaintiff's motion for summary judgment is granted . . . pltfs' motion for the case to proceed as a class action is also granted . . . it is also ordered that 42 USC Sec 607 is declared unconstitutional

May 15 Deft.'s Sharp, motion for a stay of the Court's order of Apr. 20, 1978, filed c/s.

May 15 Memo in support of Deft.'s motion for stay of order, filed. c/s

May 18 Notice of Appeal by Deft., filed. c/s.

May 23 P's opposition to deft Sharp's motion for a stay FILED CS

May 31 FREEDMAN, J. ORDER ENTERED. . . . on 5/15/78 state deft Sharp, requested a stay of this Court's order of April 20, 1978 pending implementation of deft Sharp's plan for compliance with that Order. This court believes that deft Sharp's request involves a reasonable period of time for the state deft to fully comply with the Order of April 20, 1978. The Court allows deft Sharp's motion for this Court to stay that portion of its order of April 20, 1978 . . . stay to remain in effect until Aug. 1, 1978 . . . the Court will look with disfavor upon any further motions in this action to extend the length of the stay. cc/cl

June 1. P's supplement to their opposition to deft Sharp's motion for a stay FILED CS

June 7 Deft Sharp's motion to clarify or alternatively to amend the Court's order of April 20, 1978 FILED CS.

June 7 Affidavit of Jenny Netzer in support of deft Sharp's motion to clarify or alternatively to amend the Court's order of April 20, 1978

June 16 Deft Sharp's memorandum in support of his motion to clarify or alternatively to amend the Court's order of April 20, 1978 FILED CS.



## Date

1978

- June 19 Deft Sharp's notice of the issuance of a regulation extending AFDC U Benefits to certain families in which the mother meets the sex neutral eligibility requirements of 42 U.[S.]C. Sec. 607 FILED CS.
- June 19 Deft Sharp's notice of the issuance of a supplementary instruction concerning the identification of families potentially eligible for AFDC U Benefits under the court's order of April 20, 1978 filed cs.
- June 19 Ps' opposition to deft Sharp's motion to clarify or alternatively to amend the Court's order of April 20, 1978 filed cs.
- June 19 Deft Sharp's notice of appeal filed cs
- June 23 Defendant Sharp's Notice of the submission to the United States Department HEW of a proposed amendment to Massachusetts State Plan, filed. CS.
- June 27 Copies of Complaint, Opinion, Order and Notices of Appeals docket entries forwarded to the Supreme Court.
- July 14 Pltfs' memorandum in opposition to deft Sharp's motion for an extension of the Court's stay and in further opposition to his motion to clarify or, alternatively to amend the court's order of April 20, 1978 FILED CS
- July 14 Deft Sharp's supplemental memorandum in support of his motion for extension of the court's stay of its order of April 20, 1978 FILED CS.
- Jul 7 Deft Sharp's motion for an extension of the Court's stay of its order of April 20, 1978, with respect to those families where one parent remains employed for 100 or more hours per month FILED CS
- Jul 19 FREEDMAN, J. ORDER ENTERED . . . . motion of state deft Sharp for extension of the Court's stay of its order of April 20, 1978 is hereby allowed . . . . with respect to state deft's motion to clarify or modify Order of April 20, 1978, the Court hereby takes same under advisement. All parties are hereby given an additional ten days from this date to submit any further memoranda or supporting documents. The Court intends to rule on this motion at an early date. cc/cl

## Date

1978

- Jul 28 Deft Sharp's supplemental memorandum in support of his motion to clarify or alternatively to amend the Court's order of April 20, 1978 FILED CS.
- Jul 31 Pltfs' notice of Massachusetts' Planned Action to terminate the Westcotts' AFDC-U and Medicaid because of Mr. Westcott's employment and HEW's reaction to the State's principal wage earner test FILED CS
- Aug 2 Deft Sharp's reply to pltgs' notice of the response from the Regional Office of the U.S. Dept of HEW to the State Dept of Public Welfare submission of a draft plan incorporating the principal wage-earner test filed cs.
- Aug 9 FREEDMAN, J. ORDER ENTERED . . . . having considered the memoranda and relevant supporting papers submitted by parties, this Court hereby denies the motion of state deft Sharp to clarify or alternatively, to amend the Court's order of April 20, 1978. cc/cl
- Aug 24 Deft Sharps notice of appeal filed CS
- Aug 24 Deft Sharp's motion for an extension of the Court's stay of its order of April 20, 1978 with respect to those families where one parent remains employed for 100 or more hours per month during the pendency of his appeal FILED CS
- Aug 24 Deft Sharp's memorandum in support of his motion for an extension of the Court's order of April 20, 1978 with respect to those families where one parent remains employed for 100 or more hours per month during the pendency of his appeal filed
- Aug 24 Affidavit of Jenny Netzer in support of deft Sharp's motion for an extension of the Court's stay of its order of April 20, 1978 with respect to those families where one parent remains employed for 100 or more hours per month during the pendency of his appeal filed
- Sept 8 Ps' opposition to deft Sharp's motion for a stay of the Court's April 20, 1978 order with respect to certain members of the class pending appeal FILED CS.

## Date

1978

Sept 12 Deft Sharp's memorandum in reply to pltfs' opposition to his motion for an extension of the Court's stay of its order of April 20, 1978 during the pendency of his appeal from the Court's order of August 9, 1978 FILED CS

Sept 20 FREEDMAN, J. ORDER ENTERED . . . . this Court denies the motion of state deft Sharp for an extension of stay of Court's order of April 20, 1978 . . . . this Court grants deft Sharp's alternative motion for an extension of this Court's order of April 20, 1978 . . . . cc/cl

Oct 18 Deft Sharp requests and immediate ruling on this motion without an opportunity pursuant of Local Rule 11(c)—Deft Sharp's motion for a limited extension of the stay granted by the order of Sept 20, 1978

Oct 18 FREEDMAN, J. (by the Court, Karl Fagan, Dep Clk) re deft Sharp's motion for limited stay of order of Sept 20, 1978—DENIED. cc/cl

Oct 24 Motion of the deft Secretary of HEW to stay order of April 20, 1978 pending appeal to Supreme Court filed cs.

Oct 24 Memorandum in support of motion of the deft Secretary of Hew to stay order of April 20, 1978 pending appeal to Supreme Court filed

Nov 1 Pltfs' memorandum in opposition to HEW's motion for a stay of the Court's April 20, 1978 order pending appeal FILED CS.

Nov 20 FREEDMAN, J. Re motion of the deft Sec of HEW to stay order of April 20, 1978 pending appeal to Supreme Court—"DENIED" cc/cl

Dec 4 Deft Sharp's motion to clarify the order of September 20, 1978 FILED CS.

Dec 4 Deft Sharp's memorandum in support of his motion to clarify the order of September 20, 1978 FILED

## Date

1978

Dec 6 FREEDMAN, J. ORDER ENTERED . . . . Deft Sharp's motion to clarify this Court's order of Sept 20, 1978 is hereby allowed. This Court's order of Sept 20, 1978 has extended the stay of this Court's order of April 20, 1978 with respect to those families where one parent remains employed for 100 or more hours per month, until 14 days after the U.S. Supreme Court or a single Justice thereof has ruled on deft Sharp's renewed application for a stay made Dec 4, 1978 pursuant to U.S. Supreme Court Rules 18(2) and 50(5). It is so ordered. cc/cl

Dec 5 FREEDMAN, J. Re Deft Sharp's motion to clarify the order of Sept 20, 1978—"Deft's motion to allow stay of until Supreme Court acts on its motion to reconsider on Dec 8, 1978 is allowed."

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 77-222F

WILLIAM AND CINDY WESTCOTT, PLAINTIFFS

v.

JOSEPH CALIFANO, *et al.*, DEFENDANTS

TO: Judith Hale Norris  
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for the District of Massachusetts  
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Boston, Mass. 02108

Please take notice that, pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, the attached amended complaint herein will be filed as a matter of right with the Court. No responsive pleading has yet been served upon plaintiffs.

The amendments made by the amended complaint are as follows:

- (1) The caption is amended to add the names of Susan and John Westwood as plaintiffs to this action;
- (2) New paragraphs 5a, 18a-18h have been added, and paragraphs 2, 12 and 19 have been amended, in order to allege those facts pertinent to the addition of the new plaintiffs; and
- (3) Paragraphs 1, 2, 6, 8, 9, 12, 14, 19, 21-25, 28-31, and 33 are amended to clarify that the claims of the Westwoods and all members of the class over age 21 pertain to medicaid benefits as well as to AFDC-U benefits.

(4) Paragraph 15 is amended to reflect that Ms. Westcott is another month pregnant since the filing of the original complaint.

No other amendments have been made to the original complaint.

Dated: February 25, 1977

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UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

Civil Action No. 77-222F

WILLIAM AND CINDY WESTCOTT, individually and on behalf of their unborn child; SUSAN and JOHN WESTWOOD; and all plaintiffs on behalf of all others similarly situated, PLAINTIFFS

v.

JOSEPH CALIFANO, Secretary, United States Department of Health, Education, and Welfare, and ALEXANDER SHARP, Commissioner of the Massachusetts Department of Public Welfare, DEFENDANTS

AMENDED COMPLAINT

I

PRELIMINARY STATEMENT

1. This is a case of sex discrimination. Plaintiffs challenge the federal and state Aid to Families with Dependent Children (AFDC) and Medical Assistance (Medicaid) programs under which assistance is provided to needy children in two-parent homes where the father is unemployed (called AFDC-U), but is denied to similarly situated needy children where the mother is unemployed. The result of this discrimination is to deprive needy unemployed mothers, their spouses, and their dependent children, of financial and medical assistance to meet the bare necessities of life.

2. Plaintiffs, individually, and on behalf of others similarly situated, seek declaratory and injunctive relief against the state defendant to require him to make available AFDC and Medicaid to families with children deprived of support because of the unemployment of their mother, and against the federal defendant to require him to approve and fund Massachusetts AFDC and

Medicaid plans which do not discriminate against families with an unemployed mother, on the ground that the denial of AFDC and Medicaid to two parent families with an unemployed mother denies plaintiffs their rights to equal protection of the laws as guaranteed by the Fourteenth and Fifth Amendments to the United States Constitution; and as to the state defendant on the ground that such denial of AFDC and Medicaid denies plaintiffs their rights to equality under the law as guaranteed by the Constitution of the Commonwealth of Massachusetts.

II

JURISDICTION

3. Jurisdiction over the federal defendant is conferred on this court by 28 U.S.C. § 1331. Jurisdiction over the state defendant is conferred on this court by 28 U.S.C. § 1343(3), (4), and 28 U.S.C. § 1331. The matter in controversy exceeds in value, exclusive of interests and costs, the sum of \$10,000.

4. This action is authorized by the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, the Civil Rights Act, 42 U.S.C. § 1983, and the Declaratory Judgment Act, 28 U.S.C. § 2201.

III

PLAINTIFFS

5. Plaintiffs Cindy and William Westcott are adult citizens of the United States who reside in Springfield, Massachusetts. Ms. Westcott is pregnant with their first child. They bring this action on their own behalf and on behalf of their unborn child. The Westcott family is ineligible for AFDC solely because Cindy Westcott is an unemployed mother rather than an unemployed father.

5a. Plaintiffs Susan and John Westwood are adult citizens of the United States who reside in Plainfield, Massachusetts. The Westwoods have one child, who will be two years old this coming April. Susan and John Westwood are ineligible for AFDC-U benefits and for



medical assistance coverage under medicaid solely because Susan Westwood is an unemployed mother rather than an unemployed father.

## IV

## CLASS ACTION

6. Plaintiffs bring this action on behalf of all persons similarly situated, pursuant to Rules 23(a) and (b) (2) of the Federal Rules of Civil Procedure. The members of the class similarly situated are those Massachusetts families with two parents in the home and with minor dependent children, born or unborn, who would otherwise be eligible for AFDC under Massachusetts' AFDC program, and hence medicaid as well, but for the sex discrimination in the federal statute and Massachusetts regulations, which provide for the granting of federally funded AFDC and Medicaid to families with children deprived of support because of the unemployment of their father, but not to families deprived of support because of the mother's unemployment.

7. The class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the representative party are typical of the claims of the class; and the representative party will fairly and adequately protect the interests of the class. The defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

## V

## DEFENDANTS

8. Joseph Califano is the Secretary of Health, Education, and Welfare, and as such is responsible for the federal administration of the AFDC and Medicaid programs, including the approval of AFDC and Medicaid plans submitted by the states and the authorization of

AFDC and Medicaid matching funds to states with approvable plans.

9. Alexander Sharp is the Commissioner of the Massachusetts Department of Public Welfare and as such is responsible for the state administration of the AFDC and Medicaid programs.

## VI

## FACTUAL ALLEGATIONS

10. The AFDC program is a joint federal-state effort under which the federal government reimburses the states on a percentage basis for the benefits paid to eligible families. 42 U.S.C. § 601 *et seq.* Massachusetts receives reimbursement from the federal government for 50% of its AFDC assistance costs.

11. Federal matching funds are only available under the AFDC program for state payments made to families with dependent children or unborn children, that is, needy born and unborn children deprived of support or care by reason of the death, continued absence from the home, or incapacity of either the mother or father, § 406 of the Social Security Act, 42 U.S.C. § 606, or by reason of the unemployment of the father, as defined by the Secretary of HEW, § 407 of the Social Security Act, 42 U.S.C. § 607. Federal financial participation is not available to the states for payments made to families with needy children deprived of support or care because of the unemployment of their mother.

12. Families who are eligible for AFDC may be provided medical assistance benefits under the joint federal-state Medicaid program, for which participating states also receive federal reimbursement, and for which Massachusetts receives 50% reimbursement, 42 U.S.C. § 1396d (a) (i), (ii). Families actually receiving AFDC must be provided such medicaid coverage. 42 U.S.C. § 1396a (a) (10). Families who are eligible to receive AFDC, but who do not wish to apply for such cash assistance, may be provided medicaid by any state, with federal reimbursement, if such state elects to include such families in the Medicaid program, 45 C.F.R. § 248.1(a) (1),

and Massachusetts has elected to do so. Mass. Public Assistance Policy Manual, Ch. 1, section F, subd. 2.a.

13. Massachusetts is one of the 28 states which have been induced by the substantial federal matching funds available under the Social Security Act to provide AFDC benefits to families with children deprived of support or care by reason of their father's unemployment, referred to generally as AFDC-U benefits. 6 CHSR III, Subch. A; § 301.3, Pt. 303, subpt. A, §§ 303.01, 303.4. (Ex. A). In calendar year 1975 Massachusetts paid \$18,141,684 in AFDC-U benefits, of which approximately 50% was authorized by the federal defendant to be reimbursed from federal funds.

14. On information and belief, Massachusetts has refused to provide AFDC benefits (and/or medicaid coverage) to needy families with children deprived of support or care because of the unemployment of their mother solely because no federal financial participation is available for such payments, but would provide AFDC payments and medicaid coverage to needy families deprived of the support of the mother because of her unemployment if the federal defendant would authorize federal financial participation in such payments.

15. Plaintiffs Cindy and William Wescott were married in August, 1976. Ms. Westcott is approximately five months pregnant with their first child.

16. Cindy Westcott, who is nineteen, left school in the fall of 1974, when she was in the twelfth grade. Since July 1972, Ms. Wescott has held a variety of jobs, including positions as a waitress, store clerk, and chambermaid. From May 1976 until November 1976, she was employed as a chambermaid at Howard Johnson's Motor Lodge in Springfield. In November 1976, Ms. Westcott, who is pregnant, left her job because that particular work had become too strenuous. Since then Ms. Westcott has been seeking suitable employment but has been unable to find work. She is currently willing to accept employment.

17. William Westcott, who is eighteen, left school at the age of sixteen, when he was in the ninth grade. Since leaving school two years ago, Mr. Westcott has been seeking employment to help support his family, but he

has been unable to find permanent employment, in part because of his lack of skills and education.

18. The Westcotts' only source of income since November 1976 has been from Mr. Westcott's occasional part-time jobs. Ms. Westcott is presently out of work. The Westcotts are behind in their rent, and they are unable to purchase the high nutrition foods and the clothing that Ms. Westcott should have because of her pregnancy. They desperately need the \$272.10 monthly AFDC benefits for which the Westcotts would otherwise be eligible.

18a. Plaintiffs Susan and John Westwood were married August 1971. Plaintiffs have one child and are planning to have a second child.

18b. Susan Westwood works ten to fifteen hours per week at a medical facility in Worthington, Massachusetts, as a bookkeeper. She has worked at this job since approximately the fall of 1972, and presently earns \$71 per week and takes home \$66.56.

18c. Susan Westwood has been salaried at the rate indicated in paragraph 18b for all of calendar year 1976 and up to the present date. Throughout 1975 her net weekly earnings were approximately \$50 per week.

18d. Susan Westwood is willing to register for any work or training programs and otherwise comply with any conditions of eligibility that may be necessary to qualify for AFDC-U.

18e. John Westwood is not currently employed. He takes care of the Westwood's son while his wife is working. In addition, in order to permit the family to live as self sufficiently as possible, John Westwood does work in and around their home, which he built by himself, such as cutting fire wood used to heat the home.

18f. John Westwood was employed for part of 1973 and 1974 when he did some maple sugaring and logging. He earned approximately \$50 in January, \$100 in February, \$150 in March, \$100 in April and \$75 in May of 1974, and about \$75 in each of March and April 1973. Mr. Westwood has not been otherwise employed at any other time from January 1, 1973 to the present.



18g. Susan and John Westwood applied for medicaid at the beginning of February. While they have not received a formal determination on their application, a legal services advocate for them was advised by the local welfare office that they are not eligible for medicaid. The Westwood child is eligible for medicaid for his own needs, however, because he is under 21.

18h. The Westwoods do not desire cash public assistance, despite their financial eligibility for AFDC, because they desire to remain as self-sufficient as possible. The Westwoods do wish to obtain medicaid coverage primarily because they hope to have a second child and need that coverage for adequate pre-natal care and hospital delivery. They are not eligible for general relief, and in any event, general relief medical care does not include hospital services.

19. Cindy Westcott, who is totally unemployed, and Susan Westwood, who works less than 100 hours per month, and all others similarly situated are "unemployed" for purposes of meeting the definition of "unemployed" under federal and state requirements to receive AFDC-U and Medicaid benefits, but they and other persons similarly situated are unable to obtain those benefits for their families since they are mothers (or expectant mothers) instead of fathers. Despite the fact that they are not working, William Westcott and John Westwood are not "unemployed" within the meaning of such federal and state requirements for the family's receipt of AFDC-U and/or medicaid benefits, since they do not have a sufficient prior work record. Others similarly situated to Mr. Westcott and Mr. Westwood fail to qualify as "unemployed" for the same and/or for other reasons.

20. Those members of the class similarly situated who are over age 21 have been denied medical assistance benefits under Medicaid solely because they are not eligible for AFDC benefits.

## VII

## FIRST CLAIM OF RELIEF

21. As described in paragraphs 11 and 12, under § 407 of the Social Security Act, 42 U.S.C. § 607, federal matching payments may be authorized by the federal defendant towards the cost of AFDC payments made to families with children deprived of support or care by reason of their father's unemployment, and thus under § 1905 of the Act, 42 U.S.C. § 1396d, are authorized towards the cost of medical care for such families, but such federal financial participation may not be authorized towards the cost of any payments or care to or on behalf of families with children deprived of support or care because of the mother's unemployment.

22. Because § 407 (and derivatively § 1905) permits the federal defendant to authorize federal reimbursement for payments to or on behalf of families with an unemployed father, and prohibits him from authorizing the same reimbursement for payments to or on behalf of families with an unemployed mother, the federal defendant has made available to Massachusetts AFDC-U and Medicaid programs which invidiously discriminate on the basis of sex, and has discouraged Massachusetts from adopting a plan to pay equal benefits to two parent families with an unemployed mother. The federal defendant has thereby caused such families to be denied AFDC and Medicaid benefits.

23. The distinction drawn by § 407 (and derivatively by § 1905) between needy children in two parent families with unemployed mothers, who are not eligible to receive AFDC-U, and the parents of such children, who are not eligible to receive medicaid, on the one hand, and needy children and their parents in two-parent families with unemployed fathers, who are eligible for such benefits, on the other hand, is based solely on sex and is founded on an archaic and overbroad generalization not tolerated by the Constitution, namely, that in two-parent families only males provide financial support for the family. The result is to penalize those women who are family wage

earners, their spouses and their children by denying them AFDC and/or medicaid benefits for which they are otherwise eligible.

24. The classification established by § 407, which is based solely on the sex of the unemployed parent, is arbitrary and irrational, and bears no fair and substantial relation to the purpose of the AFDC or medicaid programs, which is to provide federally-funded assistance to needy children deprived of parental support or care, and their parents, and thus denies plaintiffs and others similarly situated their rights to equal protection of the laws as guaranteed by the Fifth Amendment to the Constitution of the United States.

## VII

### SECOND CLAIM FOR RELIEF

25. As described in paragraph 13, under Massachusetts welfare regulations, 6 CHSR III, Subch. A., § 301.3; Pt. 303, Subpt. A, §§ 303.01, 303.04, AFDC benefits (and thus medicaid benefits) are made available by the state defendant to families with children deprived of support or care by reason of their father's unemployment, but are not made available by him to families with children deprived of support or care because of the mother's unemployment.

26. For the same reasons set forth in paragraphs 23 and 24 with respect to § 407 of the Social Security Act, the state welfare regulations deny plaintiffs and others similarly situated their right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

## IX

### THIRD CLAIM FOR RELIEF

27. Article No. 106, Amendment to the Constitution of the Commonwealth of Massachusetts provides that "[e]quality under the law shall not be denied or abridged because of sex . . . ."

28. As described in paragraph 13, under Massachusetts welfare regulations, 6 CHSR III, Subch. A; § 301.03, Pt. 303, Subpt. A, §§ 303.01, and 303.04, AFDC-U benefits (and thus medicaid benefits) shall be paid to families with children deprived of support or care because of the unemployment of their fathers, but may not be paid to families with children deprived of support or care because of the unemployment of the mother. This classification discriminates against families with an unemployed mother solely on the basis of the sex of the unemployed parent.

29. By denying AFDC-U and Medicaid to plaintiffs and similarly situated persons solely on the basis of sex, the state of defendant has violated plaintiffs' right to equality under the law as guaranteed by Article No. 106, Amendment to the Constitution of the Commonwealth of Massachusetts.

## X

### PRAYER FOR RELIEF

Wherefore plaintiffs pray the court to:

30. Declare that 6 CHSR III, Subch. A; § 301.03, Pt. 303, Subpt. A, §§ 303.01, and 303.04 are unconstitutional insofar as they make ineligible for AFDC, and consequently for medicaid, families with children deprived of support or care because of the unemployment of their mother, while providing such benefits to families with children deprived of support because of the unemployment of their father, in violation of the plaintiffs rights to equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article No. 106, Amendment to the Constitution of the Commonwealth of Massachusetts; and

31. Enjoin the operation or enforcement of these state welfare regulations insofar as they prohibit defendant Sharp from granting AFDC and Medicaid to families with children deprived of support or care because of the unemployment of their mother, and order defendant Sharp to pay aid to such families or to medical providers on their behalf in the same amounts and under the same standards as he pays aid to families with children de-



prived of support or care because of the unemployment of their father; and

32. Declare that § 407 of the Social Security Act, 42 U.S.C. § 607, is unconstitutional because it establishes a classification which discriminates against families with children deprived of support or care because of the unemployment of their mother, solely on the basis of sex, in violation of plaintiffs' Equal Protection rights under the Due Process Clause of the Fifth Amendment to the United States Constitution; and

33. Enjoin defendant Califano to approve any plan which may be submitted by defendant Sharp in connection with an order of this court pursuant to ¶ 31 supra; order defendant Califano to approve federal matching funds for any such plan submitted by Massachusetts; and enjoin the operation or enforcement of § 407 of the Act by defendant Califano insofar as it prohibits him from approving a Massachusetts plan or matching funds for Massachusetts to pay AFDC and Medicaid to families with children deprived of support or care because of the unemployment of their mother; and

34. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, allow plaintiffs their cost herein, including attorneys fees, and also grant such additional and alternative relief as may be just and equitable under the circumstances.

Dated: February 25, 1977

Respectfully submitted,

---

WILLIAM A. BREITBART  
Western Massachusetts Legal  
Services, Inc.  
121 Chestnut Street  
Springfield, Mass. 01103  
(413) 781-7814

---

KENNETH NEIMAN  
Western Massachusetts Legal  
Services, Inc.  
247 Cabot Street  
Holyoke, Mass. 01040  
(413) 536-2420

---

MARY R. MANNIX  
STEVEN J. COLE  
Center on Social Welfare  
Policy and Law, Inc.  
95 Madison Avenue  
New York, NY 10016  
(212) 679-3709

## EXHIBIT A

(6 CHSR III)

MASSACHUSETTS ASSISTANCE  
PAYMENTS MANUALPart 301  
Section 301.01

## Subchapter A

AID TO FAMILIES WITH  
DEPENDENT CHILDREN

## General Information

301.03 *Dependent Child*

A Dependent Child is a needy child who has been deprived of parental support or care by reason of the death, continued absence from the home, physical or mental incapacity, or the unemployment of a father, and who is living with his or her father, mother or other parent in a place of residence maintained by one or more of such relatives as his or their own home and who is under the age of eighteen (18) or under the age of twenty-one (21) and a student regularly attending school, college, or university or regularly attending a course of vocational or technical training designed to fit him for gainful employment.

(6 CHSR III)

8/76

## Massachusetts Assistance Payments Manual

## Subchapter A

AID TO FAMILIES WITH  
DEPENDENT CHILDRENEligibility Requirements Part 303  
Initial Eligibility Subpart A  
Section 303.01303.01 *Deprivation of Parental Support*

A child must be deprived of parental support due to the death, physical or mental incapacity, continued absence from the home of either parent, or unemployment of the father. Continued absence from the home includes commitment to a penal institution, desertion, divorce, annulment, separation, service in the Armed Forces or illegitimacy.

(6 CHSR III)

Rev. 2/77

## Massachusetts Assistance Payments Manual

## Subchapter A

AID TO FAMILIES WITH  
DEPENDENT CHILDRENEligibility Requirements Part 303  
Initial Eligibility Subpart A  
Section 303.04303.04 *Unemployed Father*

AFDC is available to a child (ren) deprived of parental support because of the unemployment of the natural or adoptive father with whom (s)he resides provided the father meets the following conditions:

- I. Is currently unemployed (or is employed less than 100 hours a month) and has been unemployed (or was employed less than 100 hours) for at least 30 days prior to the receipt of AFDC.

A father who has worked a total number of hours that is less than 100 hours in the 30 day period prior to AFDC-UF eligibility meets the standard regardless of whether or not he may have been employed full time at some point during this 30 day period. For example, a father might have two weeks of full time employment (amounting to 80 hours) and then two weeks of total unemployment (amounting to zero hours), and the total hours worked would be less than 100.

The standard of 100 hours a month may be exceeded for a particular month if his work is intermittent and the excess is of a temporary nature as evidenced by the fact that he was under the 100-hour standard for the two (2) prior months and is expected to be under the standard during the next month.

NOTE: Date of eligibility for AFDC will be the thirty-first day of unemployment or underemployment.

- II. Has applied for any unemployment compensation (UC) benefits to which he may be entitled. The UC benefits when received must be deducted from the AFDC grant. (See Section 303.58 regarding retroactive UC benefits)
- III. Has not refused without good cause a bona fide offer of suitable employment or training for employment within thirty (30) days prior to eligibility for AFDC-UF.

Before it is determined that a father has refused a bona fide offer of employment or training for employment without good cause, the worker must first make a determination that such an offer was actually made.

When a job is a bona fide offer made directly by an employer, the determination of good cause is to be made by the worker. In making this determination, the worker shall give consideration to such factors as the ability and physical capacity of the individual to do the job; transportation problems to and from the job; applicable minimum wages; risks to health, safety or lack of workmen's compensation protection or other factors that would make refusing a job reasonable.

The determination as to whether an offer was bona fide or whether there was good cause to refuse an offer made through DES will be made by that agency.

Trans. by S.L. 407

# Massachusetts Assistance Payments Manual

## Subchapter A

### AID TO FAMILIES WITH DEPENDENT CHILDREN

Eligibility Requirements Part 303  
Initial Eligibility Subpart A  
(Cont.) Section 303.04

#### IV. Is registered with the WIN program.

##### (a) *Initial Registration*

WIN registration is verified by the applicant's WIN Referral and Registration form (WIN #1) signed by the DES/WIN interviewer.

##### (b) *Current Registration*

Registration for WIN services shall be current in ongoing AFDC-UP cases provided that the unemployed father has not been WIN De-registered.

#### V. The unemployed father must fall into one of the following categories in order to be eligible:

- (a) Has six or more quarters of work in which he received earnings of not less than \$50.00 in each quarter, or participated in a community work and training program or under the Work Incentive Program in any 13 calendar-quarter period ending within one year prior to the application for AFDC; or
- (b) Received UC under an unemployment compensation law of any state or of the United States at sometime during the year prior to application for AFDC; or
- (c) Was qualified to receive UC under a UC law of any state or of the United States sometime during the year prior to application for AFDC but did not apply for UC; or

### AFFIDAVIT OF SERVICE

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS.:

I, Steven J. Cole, being duly sworn, depose and say that I served copies of the foregoing Notice of Filing of an Amended Complaint and Amended Complaint upon defendants by causing copies of the same to be mailed to their attorneys as follows:

**JUDITH HALE NORRIS**  
Assistant United States Attorney  
for the District of Massachusetts  
U.S. Post Office and Federal Court Building  
Boston, Mass. 02109

**Steven A. Rusconi**  
Assistant Attorney General  
State of Massachusetts  
One Ashburton Place  
Boston, Mass. 02108

STEVEN J. COLE

Sworn to before me this 25th day of February, 1977

Notary Public



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 77-222-F

WILLIAM AND CINDY WESTCOTT, PLAINTIFFS

vs.

JOSEPH CALIFANO, JR., ET AL., DEFENDANTS

STIPULATION OF PLAINTIFFS AND  
DEFENDANT SHARP

1. Plaintiffs' application for AFDC filed in November, 1976 will be reconsidered under the following conditions:
  - a. Plaintiffs' eligibility for AFDC-U will be determined with reference to all eligibility criteria thereof, excepting the requirement that the unemployed parent be a father, namely that Cindy Westcott's work history is to be considered in determining eligibility;
  - b. Alternatively, plaintiffs' eligibility for AFDC will be considered with reference to eligibility criteria regarding whether or not Cindy Westcott meets the definition of an incapacitated parent.
2. If eligibility is found under paragraph 1, assistance will be granted as of the date of plaintiffs' November application and continued pending judgment by this Court subject to further agreement of parties hereto.

/s/ Steven Rusconi/WAB  
Attorney for defendant Sharp

/s/ William A. Breitbart  
Attorney for plaintiffs

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 77-222-F

WILLIAM AND CINDY WESTCOTT, PLAINTIFFS

v.

JOSEPH CALIFANO, ET AL., DEFENDANTS

ANSWER OF ALEXANDER E. SHARP, II  
TO AMENDED COMPLAINT

Alexander E. Sharp, II, defendant in the above entitled action, hereby answers the various allegations of the complaint as follows:

1. The allegations contained in paragraphs 1 and 2 are statements of the nature of the case and therefore require no answer.
2. The allegations contained in paragraphs 3 and 4 are statements relating to jurisdiction which require no answer.
3. The allegations contained in the first two sentences of paragraph 5 and 5a are admitted. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the last sentences of paragraphs 5 and 5a.
4. The allegations contained in paragraphs 6 and 7 are conclusions of law which require no answer. If called upon to respond, the defendant would deny the same.
5. The allegations contained in paragraphs 8 and 9 are admitted.
6. The allegations contained in paragraphs 10 through 13 to the extent they are allegations of fact are admitted and to the extent they are conclusions of law they require no answer.
7. The allegations contained in paragraph 14 are denied.

8. The allegations contained in paragraph 15 are admitted.

9. The defendant is without knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 16 through 20.

10. The allegations contained in paragraph 21 to the extent they are allegations of fact are admitted and to the extent they are conclusions of law they require no answer.

11. To the extent that paragraphs 22 through 24 contain allegations of fact, they are denied and to the extent they contain allegations of law, they require no answer.

12. The allegations contained in paragraph 25 are admitted.

13. To the extent that paragraph 26 contains allegations of fact, they are denied and to the extent it contains allegations of law, they require no answer.

14. The allegations contained in paragraphs 27 through 29 are conclusions of law which require no answer.

#### FIRST DEFENSE

15. The Court should dismiss the action for failure to state a claim upon which relief can be granted. Specifically, the program administered under Section 407 of the Social Security Act, 42 U.S.C., § 607, does not unconstitutionally discriminate on the basis of sex and is therefore valid. Also, to the extent complaint alleges a claim for relief under Amendment Article No. 106 of the Constitution of the Commonwealth of Massachusetts, the action is barred by the Supremacy Clause of the United States Constitution.

#### SECOND DEFENSE

16. To the extent that the claim of Susan and John Westwood is based upon the allegations to the effect that they hope to have a second child and need coverage for adequate pre-natal care and hospital delivery as contained in paragraph 18h of the complaint, there is no

actual case or controversy before the court and it should be dismissed for lack of subject matter jurisdiction.

#### THIRD DEFENSE

17. The defendant requests this Court to refuse to exercise its judicial power of pendent jurisdiction. Amendment Article No. 106 of the Massachusetts Constitution is a recent addition to the law of the Commonwealth and its application in this instance should be left to be resolved by the Courts of the Commonwealth.

WHEREFORE, defendants pray this Court to:

18. Dismiss the portion of the complaint which alleges a claim for relief under Amendment Article No. 106 of the Constitution of the Commonwealth.

19. Dismiss the portion of the complaint concerning Susan and John Westwood which is based upon the allegation to the effect that they hope to have a second child and need certain medical coverage as contained in paragraph 18 of the complaint.

20. Declare Section 407 of the Social Security Act, 42 U.S.C. § 607 and the program administered thereunder constitutional and thereafter dismiss the complaint.

By his Attorney

/s/

STEVEN A. RUSCONI  
Assistant Attorney General  
1 Ashburton Place, 20th Fl.  
Boston, Massachusetts 02108  
Tel. No.: 727 1001

DATED: 3/16/77

# CERTIFICATE OF SERVICE

I, Steven A. Rusconi, Assistant Attorney General, hereby swear under the pain and penalties of perjury, that I have served a copy of the within Answer To Amended Complaint by mailing same, via first class mail, postage prepaid, to William A. Breitbart, Western Mass. Legal Services, Inc., 121 Chestnut Street, Springfield, Massachusetts 01103 and Judith Hale Norris, Assistant United States Attorney for the District of Massachusetts, U.S. Post Office and Federal Court Building, Boston, Mass. 02109 on the 16th day of March, Nineteen Hundred and Seventy Six.

/s/ \_\_\_\_\_

# UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

Civil Action No. 77-222-F

WILLIAM AND CINDY WESCOTT, PLAINTIFFS

v.

JOSEPH CALIFANO, JR., ET AL., DEFENDANTS

# ANSWER TO FEDERAL DEFENDANT TO AMENDED COMPLAINT

The federal defendant hereby answers the allegations of the Complaint as follows:

1. Paragraphs 1 and 2 contain plaintiffs' characterization of the action and conclusions of law, and therefore, require no response; however, insofar as answers may be required, defendant denies each and every allegation of fact and conclusion of law contained in paragraphs 1 and 2.

2. The allegations contained in paragraphs 3 and 4 contain conclusions of law, and therefore, require no response; however, insofar as answers may be required, defendant denies each and every allegation contained in paragraphs 3 and 4.

3. Defendant is without sufficient knowledge or information upon which to form a belief as to the truth or accuracy of the allegations contained in paragraphs 5 and 5a; and upon this basis denies the allegations therein.

4. The allegations contained in paragraphs 6 and 7 contain plaintiffs' characterization of the action and conclusions of law, and therefore, require no response; however, insofar as answers may be required, defendant denies each and every allegation of fact and conclusion of law contained in paragraphs 6 and 7.



5. Defendant admits paragraph 3 except to clarify that the Federal administration of the AFDC and Medicaid programs includes authorization of AFDC and Medicaid matching funds to States which have made expenditures in accordance with approved State plans.

6. Defendant admits paragraph 9.

7. Defendant admits allegations contained in paragraph 10.

8. With respect to paragraph 11, defendant admits that Federal financial participation is not presently available to States for AFDC payments made to families with children deprived of parental support or care solely because of the mother's unemployment. Defendant neither admits nor denies the remainder of paragraph 11, the allegations therein being conclusions of law which require no answer, but states that Federal matching funds are available under the AFDC program for State payments to or on behalf of families with dependent children to the extent provided in 42 U.S.C. §§ 606 and 607.

9. Defendant admits the allegations contained in paragraph 12, but refers the Court to the applicable statutory provisions at 42 U.S.C. §§ 1396a(a)(10) and 1396d(a)(i) and (ii), and to the regulations at 45 C.F.R. § 248.1 for a full and accurate statement of their contents.

10. With respect to the first sentence of paragraph 13, defendant admits that as of September 1976 there were 28 States, including Massachusetts, having approved State plans providing AFDC-UF benefits. Defendant admits the allegations contained in the last sentence of paragraph 13, but avers that he is without sufficient knowledge or information upon which to form a belief as to the exact amount of AFDC-UF benefits paid by Massachusetts in calendar year 1975.

11. Defendant is without sufficient information or knowledge upon which to form a belief as to the truth or accuracy of the allegations contained in paragraphs 14 through 20; and upon this basis denies each and every allegation of fact and conclusion of law contained in paragraphs 14 through 20.

12. Paragraphs 21 through 24 contain conclusions of law, and therefore, require no response; however, insofar as answers may be required, defendant denies each and every allegation of fact and conclusion of law contained in paragraphs 21 through 24, except defendant admits that federal matching funds under 42 U.S.C. § 607 are not provided for AFDC payments to families with children who are deprived of parental support or care solely because of the mother's unemployment.

13. Defendant neither admits nor denies paragraph 25, but refers the Court to the Massachusetts welfare regulations cited therein.

14. The allegations contained in paragraph 26 are conclusions of law, and therefore, require no response; however, insofar as an answer may be required, defendant denies paragraph 26.

15. The allegations contained in paragraph 27 through 29 are conclusions of law, and therefore, require no response; however, insofar as answers may be required, defendant denies each and every allegation of fact and conclusion of law contained in paragraphs 27 through 29.

JAMES N. GABRIEL  
United States Attorney

By:

JUDITH HALE NORRIS  
Assistant U.S. Attorney

OF COUNSEL:

SAMUEL C. FISH  
Regional Attorney  
Department of Health, Education and Welfare  
Boston, MA 02203



## CERTIFICATE OF SERVICE

Suffolk, ss.

Boston, Massachusetts  
April 21, 1977

I, Judith Hale Norris, Assistant U.S. Attorney, hereby certify that I have this day served foregoing Answer of Federal Defendant To Amended Complaint by mailing a copy of the same in a franked, official envelope to:

Steven A. Rusconi  
Assistant Attorney General  
1 Ashburton Place  
Boston, MA 02108

William Breitbart, Esquire  
Western Mass. Legal Services, Inc.  
121 Chestnut St.  
Springfield, MA 01103

---

JUDITH HALE NORRIS  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 77-222-F

WILLIAM AND CINDY WESTCOTT, et al., PLAINTIFFS

v.

JOSEPH CALIFANO, JR., et al., DEFENDANTS

STIPULATION OF PLAINTIFFS AND  
DEFENDANT SHARP

1. Plaintiffs Susan and John Westwood's application for Medicaid filed in or about February of 1977 and originally denied by letter dated March 2, 1977 will be re-considered under the following conditions: said plaintiffs eligibility for Medicaid will be determined with reference to all eligibility criteria used to determine Medicaid eligibility of families who are eligible for AFDC-U but who do not wish to apply for such AFDC-U assistance, excepting the requirement that the unemployed parent be a male; accordingly, Susan Westwood's work history is to be considered in determining eligibility;
2. If eligibility is found under paragraph 1, Medicaid coverage will be granted as of the date of plaintiffs' application and continued pending judgment by this Court subject to further agreement of parties hereto.

/s/ Paul W. Johnson  
Attorney for Defendant Sharp  
9/12/77

/s/ Kenneth Neiman  
Attorney for Plaintiffs  
September 2, 1977

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 77-222-F

CINDY AND WILLIAM WESTCOTT, *et al.*, PLAINTIFFS

*vs.*

JOSEPH A. CALIFANO, *et al.*, DEFENDANTS

STIPULATION

Plaintiffs and defendants, through their attorneys, stipulate that the following paragraphs constitute the undisputed facts in this case.

1. Plaintiffs Cindy and William Westcott are married and reside in Springfield, Massachusetts with their infant son who was born on June 18, 1977.

2. Cindy Westcott, who is 20 years of age, has been employed at various full-time and part-time jobs since 1972. During July and August 1972 she earned net pay of about \$60 a week as a tobacco picker. During October and November 1973 she earned a total of about \$175 through a part-time job at a motel. From July to September 1974 she earned take-home pay of about \$30 a week doing general store work. From May 1975 until August 1975 she earned a total of about \$800 as a waitress. In September 1975 she earned a total of about \$50 as a waitress. From May 1976 until November 1976 she worked as a chambermaid at Howard Johnson's Motor Lodge in Springfield and received an average net pay of about \$50 per week.

3. William Westcott, who is 18, has an 8th grade education. His employment history consists of temporary odd jobs. During the early summer of 1976 he worked briefly unloading trucks and chopping trees. In December 1976 he obtained a part-time job unloading trucks which lasted only 3 weeks. He had a temporary CETA job during August and September 1976.

4. In November 1976 the Westcotts applied for public assistance at the Springfield Office of the Department of Public Welfare. They were denied AFDC-U benefits by a written notice dated November 26, 1976, which stated that William did not have enough quarters of work to satisfy the definition of an unemployed father as required by CHSR III-303 Subpart A, § 303.04. They were orally informed that they were ineligible for General Relief either as a family or individuals. On December 29, 1976 Cindy Westcott received a Medicaid card because she was eligible as a needy individual under 21.

5. After this lawsuit was filed, pursuant to a stipulation between the Westcotts' attorney and the attorney for the state defendant, the Westcotts' eligibility for AFDC was re-determined. Accordingly, the Department of Public Welfare determined in February 1977 that the Westcotts satisfied all conditions of eligibility for AFDC-U except the condition that the unemployed parent be male. Cindy Westcott, based on her work history was found to meet the definition of "unemployed" except for the fact that she is female. That Cindy Westcott meets the definition of unemployed was sufficient, pursuant to the stipulation, for the Westcotts to be granted AFDC-U. They were provided AFDC-U benefits retroactive to November 1976, and pursuant to the stipulation, they continue to receive AFDC-U benefits based on their continued eligibility but for the requirement that the unemployed parent be male.

6. Plaintiffs Susan and John Westwood are married and reside in Plainfield, Massachusetts with their son who was 2 years old in April, 1977.

7. Since 1972 Susan Westwood has worked part-time as a bookkeeper at Hiltown Medical Services. She works about 10-15 hours a week. From 1976 and continuing until the present Susan Westwood earns take home pay of approximately \$66 per week. During 1975 her net earnings were about \$50 a week. From approximately August 1973 until September 1975 she held another part-time job at the Family Planning Council of Western Massachusetts.

8. From January 1973 John Westwood's only employment has been maple sugaring for two months in 1973 and maple sugaring and logging for five months in 1974.

9. In February 1977 Susan and John Westwood applied for Medicaid benefits. By letters dated March 2, 1977 the Westwoods were denied Medicaid benefits because 1) neither was incapacitated so as to qualify them for MA-DA (Medicaid benefits for the disabled), and 2) John Westwood did not meet the definition of an unemployed father because of his insufficient work history. Their child receives Medicaid as a needy individual under 21.

10. In September 1977 the Westwoods' attorney and the state's attorney entered into a stipulation pursuant to which Massachusetts considered the Westwoods' eligibility for Medicaid benefits by applying all the Medicaid eligibility requirements for families who are eligible for AFDC-U except the requirement that the unemployed parent be male. By letter dated October 5, 1977, the Westwoods were notified by the Department of Public Welfare that they had been determined eligible to receive Medicaid. They are presently receiving only Medicaid based on their continuing eligibility but for the requirement that the unemployed parent be male.

Dated: New York, New York  
January 27, 1978

Respectfully submitted,

/s/ Mary R. Mannix  
MARY R. MANNIX  
Center on Social Welfare Policy  
and Law, Inc.  
95 Madison Avenue  
New York, NY 10016  
(212) 679-3709

/s/ Kenneth Neiman  
KENNETH NEIMAN  
Western Massachusetts Legal  
Services  
247 Cabot Street  
Holyoke, MA 01040  
(413) 536-2420

Attorneys for Plaintiffs

Assented to by telephone:

EDWARD F. HARRINGTON  
United States Attorney

By: /s/ Judith Hale Norris  
JUDITH HALE NORRIS  
Asst. U.S. Attorney  
John McCormack Post Office and  
Court House  
Boston, MA 02107  
(617) 223-3258

Attorney for Defendant Califano

Assented to by telephone:

FRANCIS X. BELLOTTI  
Attorney General

By: /s/ Paul Johnson  
PAUL JOHNSON  
Asst. Attorney General  
One Ashburton Place  
Boston, MA 02108  
(617) 727-1022  
Attorney for Defendant Sharp

# CERTIFICATE OF SERVICE

I, Mary R. Mannix, certify that on January 27, 1978, a copy of the foregoing Stipulation was served by mail on Judith Hale Norris, Asst. U.S. Attorney, John McCormack Post Office and Courthouse, Boston, MA. 02107, attorney for defendant Califano and on Paul Johnson, Asst. Attorney General, One Ashburton Place, Boston, MA. 02108, attorney for defendant Sharp.

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MARY R. MANNIX

# UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

Civil Action No. 77-222-F

CINDY AND WILLIAM WESTCOTT, ET AL., PLAINTIFFS

v.

JOSEPH A. CALIFANO, ET AL., DEFENDANTS

# DEFENDANT SHARP'S MOTION FOR A STAY OF THE COURT'S ORDER OF APRIL 20, 1978, PENDING IMPLEMENTATION OF DEFENDANT SHARP'S PLAN FOR COMPLIANCE

Defendant Alexander Sharp II, Commissioner of the Department of Public Welfare of the Commonwealth of Massachusetts (Department), moves that the Court stay so much of its order of April 20, 1978, as enjoins him (1) from the operation or enforcement of 6 C.H.S.R. III, Subch. A, Pt. 301, § 301.3 and Pt. 303, Subpt. A, §§ 303.01 & 303.04 of the Massachusetts Assistance Payments Manual (AP Manual) insofar as these eligibility requirements prohibit him "from granting AFDC and Medicaid to families with children deprived of support or care because of the unemployment of the mother" and (2) "from refusing to grant AFDC and Medicaid benefits to families with children deprived of support or care because of the unemployment of the mother in the same amounts and under the same standards as he provides such benefits to families with children deprived of support or care because of the unemployment of the father in accordance with the Massachusetts regulations" pending implementation of the following plan for compliance.

In order to expedite the extension of AFDC-U benefits on a sex-neutral basis to those more needy households where the only employed parent has become unemployed, the Department has drafted a regulation. A copy of this regulation is attached as Appendix A. The regulation would extend eligibility for AFDC-U benefits to house-



holds where the mother meets the definition of unemployment and where the father is employed less than 100 hours per month. The Department will publish this proposed regulation on May 11, 1978, in accordance with the rule-making procedures established by Mass. G.L. c. 30A, § 3. The Department will have put the regulation into effect retroactively to April 20, 1978, in the field by June 15, 1978. On May 10, 1978, the Department transmitted an instruction to its field workers to record and identify those cases in which an application for AFDC-U benefits made by an intact (*i.e.*, two-parent) family has been denied on or after April 20, 1978. A copy of this instruction is attached as Appendix B. This instruction will ensure that the Department is able to provide AFDC-U benefits on a sex-neutral basis to all eligible applicants from April 20, 1978, forwards. In order to maintain federal financial participation in its expanded sex-neutral AFDC-U program pursuant to 42 U.S.C. § 603(a), the Department has submitted this proposed regulation to HEW for its consideration as an amendment to Massachusetts' State plan. A copy of the letter of May 9, 1978, from the Department to HEW in this regard is attached as Appendix C.

While the above-described regulation would cover those households where the only employed parent has become unemployed, defendant Sharp's plan for compliance must also address the more complicated status of households where both parents had been employed but one parent has become unemployed. The Department must determine whether only the unemployment of the primary wage-earner should make a household eligible for AFDC-U benefits or whether either parent's unemployment is sufficient to establish eligibility. The Department must also resolve questions arising from the interrelationship between an expanded sex-neutral AFDC-U program and other AFDC-related programs. One such question is which parent will be subject to the work registration requirement under the federally mandated Work Incentive Program (42 U.S.C. §§ 602(a)(19), 630-644 (Supp. III, 1977)). Defendant Sharp proposes the following schedule for development and implementation of a plan for com-

pliance with the Court's order with regard to applicant households where one parent continues to be employed. On June 1, 1978, the Department will (1) publish a regulation covering applicant households with an employed parent in accordance with the rule-making procedure established by Mass. G.L. c. 30A, § 3, (2) file the draft regulation with the Court, serving copies on all parties, and (3) submit the draft regulation to HEW for consideration as an amendment to Massachusetts' State plan. The Department will develop a final form of the regulation by July 8, 1978. The Department will print the final regulation and issue it to field workers by August 1, 1978. The regulation will be effective retroactively to April 20, 1978.

By his attorney,

/s/ Paul W. Johnson  
 PAUL W. JOHNSON  
 Assistant Attorney General  
 One Ashburton Place  
 Room 2019  
 Boston, MA 02108  
 (617) 727-1022

Dated: May 10, 1978

## APPENDIX A

[SEAL]

ALEXANDER E. SHARP  
Commissioner

THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC WELFARE  
600 Washington Street, Boston 02111

DRAFT

State Letter  
May 9, 1978

To: Department Staff

From: ALEXANDER E. SHARP, Commissioner

Re: *Westcott v. Califano and Sharp—AFDC—  
Unemployed Father*

The United States District Court for Massachusetts on April 20, 1978 ordered the Department to provide for the granting of AFDC and Medical Assistance to families with children who are deprived of support or care because of the unemployment of the mother.

This letter is an emergency interim regulation until full compliance with the Court's order can be achieved. When a family applying for AFDC or MA-AFDC is ineligible solely because the father does not qualify as an unemployed father for lack of the required quarters of work, the worker must determine whether the mother meets the conditions for "unemployed father" except for the fact that she is female. (Assistance Payments Manual Section 303.04). If she meets these conditions, the case is eligible for AFDC-UF or MA-AFDC.

The Department is developing a regulation which will fully comply with the Court's order. Until the regulation is issued, families with fathers who are employed 100 hours or more per month will continue to be ineligible for AFDC-UF.

## APPENDIX B

[SEAL]

ALEXANDER E. SHARP  
Commissioner

THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC WELFARE  
600 Washington Street, Boston 02111

AP-78-41

Date: 5/10/78

To: Assistance Payments Staff

From: ROBERT S. CASSIDY, Associate Commissioner for  
Field Operations; STEVE KANE, Assistant Com-  
missioner for Assistance Payments

Re: *Westcott v. Califano and Sharp—AFDC—  
Unemployed Father*

The United States District Court for Massachusetts on April 20, 1978 ordered the Department to provide for the granting of AFDC and Medical Assistance to families with children who are deprived of support or care because of the unemployment of the mother.

The Department is currently developing a policy to comply with the Court's order. Until regulations are promulgated, each office must clearly identify those cases in which an application for AFDC-UF made by an intact family has been denied on or after April 20, 1978.

The identification shall be made by writing the word "Westcott" in the disposition block of the Application Register (Form AP-1a).

MJM/kah

## APPENDIX C

[SEAL]

ALEXANDER E. SHARP, II  
Commissioner

THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC WELFARE  
600 Washington Street, Boston 02111

May 9, 1978

Charles C. Gentile  
Acting Assistant Regional Commissioner  
Office of Family Assistance  
U.S. Department of Health, Education and Welfare  
J. F. Kennedy Building  
Government Center  
Boston, Massachusetts 02203

Dear Mr. Gentile,

The United States District Court for Massachusetts on April 20, 1978 ordered the Department to provide for the granting of AFDC and Medical Assistance to families with children who are deprived of support and care because of the unemployment of the mother.

We are enclosing for your information a copy of a memorandum which announces the decision to our field offices, and a draft regulation which is being posted for public comment in accordance with Chapter 30A of the General Laws of Massachusetts. We would particularly welcome your reaction to the second document, which may lead to formal changes in our State Plan.

Sincerely,

/s/ Paul Provencher  
for Steve Kane  
Assistant Commissioner for  
Assistance Payments

PP/kah

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 77-222-F

CINDY AND WILLIAM WESTCOTT, ET AL., PLAINTIFFS

v.

JOSEPH A. CALIFANO, ET AL., DEFENDANTS

AFFIDAVIT OF JENNY NETZER IN SUPPORT OF  
DEFENDANT SHARP'S MOTION TO CLARIFY OR,  
ALTERNATIVELY, TO AMEND THE COURT'S  
ORDER OF APRIL 20, 1978

I, Jenny Netzer, depose under oath that:

1. I am a budget analyst for the Department of Public Welfare (DPW) of the Commonwealth of Massachusetts.
2. I have read the Court's Orders of April 20, 1978, and May 31, 1978, in this action.

Estimated Additional Cost of an Expanded  
AFDC-U Program Where the Unemployment  
of Either Parent Would Establish a Family's  
Eligibility

3. For the reasons set forth in subsequent paragraphs, I estimate that, if DPW were to administer a sex-neutral AFDC-U program in which intact families were eligible to participate whenever either parent met the federal definition of unemployment, approximately 5,000 newly eligible families would have begun to receive AFDC benefits on the basis of this expanded AFDC-U program within one year after its initiation. As these newly eligible families would receive benefits for varying portions of the first year, the total additional cost of the expanded AFDC-U program for the first year would be approximately \$7,200,000. For subsequent years, the total additional annual cost of AFDC benefits for 5,000 families would be approximately \$14,400,000. I esti-



mate that 8,000 newly eligible families in total would be receiving AFDC benefits under such an expanded AFDC-U program within two or three years of its implementation. The total additional annual cost of AFDC benefits for these newly eligible recipient households would be approximately \$23,000,000. Since approximately 500 families out of the above-stated recipient population of 8,000 families are assumed to be currently receiving General Relief (GR), DPW's annual GR costs would thus decrease by approximately \$1,500,000 when these 500 families began to receive AFDC benefits. The above-estimated figures reflect the incremental cost which an extended sex-neutral program would impose upon the annual cost of the existing AFDC-U caseload prior to April 20, 1978.

#### Methodology Utilized in Estimating Cost of an Expanded AFDC-U Program

4. I derived the above-stated estimates by calculating the total number of families that would be eligible for AFDC benefits if income were the only test. I then decreased this number in order to allow for two factors: (1) there are other eligibility tests; (2) not all eligible families apply for and begin receiving AFDC benefits. Since different income tests are used in determining eligibility at intake and in redetermining the continuing eligibility of families that have been receiving AFDC, I used the two tests to derive two maximum numbers of income-eligible families. Under the initial eligibility income test, approximately 42,000 intact families would be eligible for AFDC; under the continuing income eligibility test, over 200,000 intact families would be eligible for AFDC. As families which have been found eligible for AFDC can retain their eligibility even when their income increases beyond the initial eligibility standard, the true number of eligible families would include some portion of those families whose income falls between the two income standards. Therefore, I worked first with the number of two-parent families with children whose countable income is below the initial eligibility AFDC standard. From this number, I subtracted two-parent

families which were eligible for AFDC benefits prior to April 20, 1978. These families would have been eligible on the basis of an unemployed father, an incapacitated parent, or a remarried mother. From the remainder, I then subtracted those two-parent families who, although income-eligible, would not actually apply for AFDC benefits. I next added in the number of families with income in excess of the initial eligibility standard but below the continuing eligibility standard that I estimated would have begun to receive AFDC benefits at a time when their income fell below the initial eligibility standard and would continue to do so despite a subsequent increase in income.

#### Detailed Description of Methodology of Estimating Cost

5. The estimate that 42,000 intact families with children meet the initial income eligibility test was calculated from demographic data for Massachusetts reported in a special 1975 U.S. Census Bureau survey entitled the Survey of Income and Education (SIE). A matrix of Massachusetts families with children by family size and income class was tabulated from the SIE. The number of AFDC income eligibles for each family size was determined by summing the families in each income class up to the income cut-off, the AFDC standards plus average work-related expenses for a family of that size. The 1975 data from the Survey of Income and Education is being used to reflect present conditions on the assumption that an upward income distribution shift between 1975 and 1978 is offset by growth in the number of intact families.

6. The estimate of 42,000 families with children meeting the initial income eligibility test includes an estimated 32,000 families which are currently eligible for AFDC benefits. The majority of these 32,000 families consists of families who were eligible for AFDC-U prior to April 20, 1978. On the basis of estimates made by the United States Department of Health, Education and Welfare (DHEW), I assume that the 5,800 families which were receiving benefits under AFDC-U prior to

April 20, 1978, represented 25% of the families eligible under the AFDC-U program. On this basis, I estimate that 23,000 out of the 42,000 income-eligible intact families were eligible for AFDC-U prior to April 20, 1978. I assumed that all eligible families with an incapacitated parent or a remarried mother are currently receiving AFDC benefits and that approximately 50% of the current AFDC cases involving remarried mothers would meet the initial income eligibility test. I, therefore, conclude that the population of 42,000 intact families which would meet the initial income eligibility test included 5,400 families with incapacitated parents and 3,700 families with remarried mothers.

7. I have assumed that half of the intact families newly eligible for AFDC as a result of the expanded AFDC-U program would actually begin receiving public assistance. This assumption was based on information on participation rates in the current AFDC program. Current participation in the Basic-AFDC program is about 95%, while the participation in the AFDC-U program is estimated by federal studies to be about 25%. The expanded AFDC-U program appears to allow a family to maintain eligibility when the parent initially qualifying as unemployed begins to work more than 100 hours per month if the other parent can then meet the federal definition of unemployment. Under these conditions, the expanded AFDC-U program would become a long-term income supplement for many families. As previously structured by federal statute and regulations, the AFDC-U program had operated largely to provide a short-term, last-resort source of financial support when a father was between jobs. The participation rate in the expanded AFDC-U program should thus be higher than it had been in the AFDC-U program prior to April 20, 1978.

8. For two reasons, I do not believe that newly eligible families will participate in the expanded AFDC-U program at the 95% rate at which eligible households participate in the Basic-AFDC program. First, many families find means of support other than through applying for AFDC benefits. Second, an undetermined number

of the 10,000 families (which comprise the difference between the total 42,000 income-eligible families and the 32,000 such families which were eligible for AFDC in any form prior to April 20, 1978) whose income would meet the initial AFDC eligibility test would in fact be ineligible because they had resources in excess of the AFDC assets limit, because the unemployed parent did not have the necessary work history, or because both parents were working more than the 100 hour limit. While the work history requirement in federal law would in all likelihood not disqualify many parents, I could find no information on which to base an estimate of its effect. I believe, however, that it is not unreasonable to assume that 50% of the new income-eligibles will qualify for and start receiving benefits by the end of the expanded AFDC-U program's first year.

9. Once they are receiving AFDC benefits, families can retain their income eligibility even when their income increases beyond the initial eligibility standard. Therefore, some portion of the approximately 160,000 families whose income falls between the initial eligibility and continuing eligibility income limits will actually receive AFDC benefits under the expanded AFDC-U program. In order to estimate this portion, I determined the proportion of one-parent families in each income class above the initial eligibility standard which are currently receiving AFDC benefits and applied this proportion to the number of two-parent families in the corresponding income class. The sum of the resulting figures for each income class was about 3,000 families. It is assumed that these families will not start receiving AFDC benefits until the second or third year of the expanded AFDC-U program's operation.

10. I have assumed that the average family which begins receiving AFDC benefits under the expanded AFDC-U program will receive a monthly payment of about \$240. This amount is what a family of four in which one parent was working full-time at the minimum wage would receive. If 5,000 of the newly eligible families were receiving AFDC benefits by the end of the first year following the AFDC-U program's expansion,



they would receive assistance for an estimated average of six months, for a total cost of \$7,200,000. The annualized cost of these additional 5,000 cases will be \$14,400,000. As to the long run, I assume that expansion of the AFDC-U program will add 8,000 families in all to the AFDC rolls and \$23,000,000 to annual AFDC costs.

11. I have assumed that all of the 500 families now receiving GR would be eligible for benefits under the expanded AFDC-U program. The annual cost of the GR program would accordingly decrease by \$1,500,000 if these families were to begin to receive AFDC benefits.

12. On the basis of federal financial participation at a 51.62% rate in the costs of an expanded AFDC-U program, the net cost to DPW of the expanded AFDC-U program would be approximately \$2,000,000 in the first year (at an annualized rate of \$5,500,000) and \$9,600,000 by the third year after its implementation.

13. I have developed the above-described estimate of the additional cost of an expanded AFDC-U program in conjunction with other budget analysts in DPW.

Estimated Incremental Cost of a Sex-Neutral  
AFDC-U Program Where Unemployment of  
the Family's Principal Wage-Earner is Pre-  
requisite to Eligibility

14. I have estimated the incremental cost of a sex-neutral AFDC-U program which incorporated the eligibility requirement that the family's principal wage-earner be unemployed. In order to do so, I determined how many low-income two-parent families in which the mother had earned more than half the family's income would begin to receive AFDC benefits under the expanded AFDC-U program. I referred to national information developed by the United States Census Bureau for 1974 in its Current Population Survey. This information showed that the earning of wives contributed 50% or more to family income in 29% of two-parent families with an annual income less than \$7,000. I assumed that the new recipient population under an expanded AFDC-U program with a principal wage-earner

requirement would bear the same proportional relationship to the AFDC-U program's population prior to April 20, 1978, as families in which the mother is the principal wage-earner bear to families in which the father is the principal wage-earner, that is, 29% to 71% of all two-parent families with an annual income less than \$7,000. The resulting figure for the new recipient AFDC-U population under a principal wage-earner plan was 2,380. From this figure, however, I subtracted those families assumed to be already receiving AFDC benefits. These are families which receive AFDC benefits because the father is unemployed or incapacitated, although the mother is working. Since 15% of all families receiving AFDC benefits have earned income, I assumed that 15% of incapacity cases and 15% of current AFDC-U cases are included within the above-described 2,380 families. Therefore, I factored those incapacity and AFDC-U cases out of the 2,380 families. The resulting number of families which would begin to receive AFDC benefits under a sex-neutral AFDC-U program with a principal wage-earner requirement is 700. I assumed that these families would, on the average, receive the full AFDC grant for a family of four of \$395.50 per month. The total annual incremental cost of such a sex-neutral AFDC-U program would be \$3,300,000. As these families would receive AFDC benefits for varying portions of the first year, I assume that the total incremental cost for the first year would be \$1,650,000.

Estimated Total Annual Cost of the AFDC-U  
Caseload Prior to April 20, 1978

15. I estimate that the total annual cost of the existing AFDC-U caseload prior to April 20, 1978, was approximately \$30,000,000.

Signed,

/s/ Jenny Netzer  
JENNY NETZER

DATED: June 7, 1978



Then appeared before me the above-named individual and swore that the statements contained in this affidavit are true to the best of her knowledge and belief.

/s/ Paul W. Johnson  
 PAUL W. JOHNSON  
 Notary Public  
 My commission expires on  
 July 21, 1983

[SEAL]

ALEXANDER E. SHARP  
 Commissioner

THE COMMONWEALTH OF MASSACHUSETTS  
 DEPARTMENT OF PUBLIC WELFARE  
 600 Washington Street, Boston 02111

June 14, 1978

Mr. Charles C. Gentile  
 Acting Assistant Regional Commissioner  
 Office of Family Assistance  
 Department of Health, Education and  
 Welfare  
 John F. Kennedy Federal Building  
 Government Center  
 Boston, Massachusetts 02203

Dear Mr. Gentile:

The United States District Court for Massachusetts on April 20, 1978 in *Westcott vs. Califano and Sharp*, ordered the Massachusetts Department of Public Welfare to provide for the granting of AFDC and Medical Assistance to families with children who are deprived of support or care because of the unemployment of the parent. Previously, it applied only to unemployed fathers.

We are enclosing a copy of our State Letter 463, issued June 8, 1978 as an emergency interim regulation and retroactive to April 20, 1978 which mandates the court ruling. Applications for assistance made by an intact family denied on or after this date will be redetermined for eligibility.

Also enclosed is the draft of a new State Letter which will supercede emergency State Letter 463, making the court ruling permanent policy. It is expected that the draft will be placed in the required 21 day advertising period for public comment by June 15, 1978. After review, field issuance should be the middle of July.

The *State Plan of Operations (Title IV-A)* will be amended back to the date of the court ruling after promulgation of permanent change of policy (*Attachment 2.4A, Unemployment of the Father*).

In the meantime, based on the court ruling, we are amending the definition of *Unemployed Father* under *Section 2.4*. Enclosed is a draft of a new page (28A) to be added to the plan. A OPC-11 Transmittal Notice is being prepared.

In order to insure correctness and acceptance of the draft plan material, we would appreciate your review and comments as soon as possible.

Sincerely,

/s/ Steve Kane  
STEVE KANE  
Assistant Commissioner  
Assistance Payments

JAS/lc

[SEAL]

ALEXANDER E. SHARP  
Commissioner

THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC WELFARE  
600 Washington Street, Boston 02111

State Letter 463  
June 8, 1978

TO: DEPARTMENT STAFF

FROM: ALEXANDER E. SHARP, COMMISSIONER

RE: WESTCOTT V. CALIFANO AND SHARP—AFDC—  
UNEMPLOYED FATHER

The United States District Court for Massachusetts on April 20, 1978 ordered the Department to provide for the granting of AFDC and Medical Assistance to families with children who are deprived of support or care because of the unemployment of the mother.

This letter is an emergency interim regulation until full compliance with the Court's order can be achieved. When a family is ineligible for AFDC or MA-AFDC solely because the father does not qualify as an unemployed father for lack of the required quarters of work, the worker must determine whether the mother meets the conditions for "unemployed father" except for the fact that she is female. (Assistance Payments Manual Section 303.04). If she meets these conditions, the case is eligible for AFDC-UF or MA-AFDC.

AFDC-UF eligibility must be determined in accordance with the emergency interim regulation described above for all AFDC cases identified as "Westcott" on the Application Register under instructions in AP memo 78-41 dated May 10, 1978.

The CSAO/WSO must also review the MA/AFDC application register and redetermine eligibility for those cases

in which an application made by an intact family has been denied on or after April 20, 1978.

The Department is developing a regulation which will fully comply with the Court's order. Until the regulation is issued, families with fathers who are employed 100 hours or more per month will continue to be ineligible for AFDC-UF or MA-AFDC.

This letter will remain as an active State Letter until manual pages can be issued to fully comply with the order of the court.

This letter is effective April 20, 1978.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 77-222-F

CINDY AND WILLIAM WESTCOTT, ET AL., PLAINTIFFS

v.

JOSEPH A. CALIFANO, ET AL., DEFENDANTS

DEFENDANT SHARP'S MOTION FOR AN EXTENSION OF THE COURT'S STAY OF ITS ORDER OF APRIL 20, 1978, WITH RESPECT TO THOSE FAMILIES WHERE ONE PARENT REMAINS EMPLOYED FOR 100 OR MORE HOURS PER MONTH

Defendant Alexander Sharp II, Commissioner of the Massachusetts Department of Public Welfare (Department), moves that the Court order that its stay of its Order of April 20, 1978, as set forth in its Order of May 31, 1978, be extended until October 1, 1978, with respect to the provision of benefits under the AFDC-U program (established by 42 U.S.C. § 607 and implemented by federal and state regulations) to those families where one parent remains employed within the definition of 45 C.F.R. § 233.100 (a) (1) (i), that is, for 100 or more hours per month. As to those families where both parents meet the federal definition of unemployment, the Department issued a regulation on June 8, 1978, which extended benefits under the AFDC-U program to such families retroactively to April 20, 1978, where either parent met or meets the program's sex-neutral



eligibility requirements. A memorandum in support of this motion has been filed and served herewith.

By his attorney,

/s/ Paul W. Johnson  
 PAUL W. JOHNSON  
 Assistant Attorney General  
 One Ashburton Place  
 Boston, MA 02108  
 (617) 727-1022

Dated: July 7, 1978

APPENDIX A

July 11, 1978

Mr. Stephen Kane  
 Assistant Commissioner for Assistance Payments  
 Department of Public Welfare  
 600 Washington Street  
 Boston, Massachusetts 02111

Dear Mr. Kane:

This is in reply to your letter of June 14, 1978, with which you sent us, for review, a copy of a draft State Letter you proposed to issue to the field on the subject of the unemployed parent. This has been necessitated by the *Westcott v. Califano* and *Sharp* case. You requested our comments to assure correctness and acceptance of your revised State Plan.

Since the Court's Order of May 31, 1978 allowed your motion to stay extension of AFDC and Medicaid benefits to unemployed mothers until August 1, 1978, you have until that date to come into full compliance with the Court's Order of April 20, 1978. The May 31st Order also requires you to identify and keep records of all members of the plaintiff class who applied for AFDC-U or Medicaid after April 21, 1978, in order to be able to determine their eligibility for benefits and to pay such benefits as soon as the stay has expired.

The Court's Order of May 31, 1978 pointed out that the April 20th Order does *not* authorize the imposition of additional limitations on the awarding of AFDC-U or Medicaid benefits, including the primary wage earner limitation which you propose. While your motion of May 10, 1978 to clarify or amend the Court's Order has not been acted upon, our Regional Attorney believes that it is unlikely that the court will permit the adoption of a primary wage earner standard. Unless and until the court does so, we cannot assume that a primary wage earner standard is permissible.

Aside from the court action, our Regional Attorney doubts that HEW could approve a primary wage earner

standard of eligibility for AFDC-U benefits under the current statute (which has become sex-neutral as a result of litigation). This is based on the fact that while Congress, in enacting Section 407 of the Social Security Act, may have had in mind the idea of the breadwinner, in actual practice benefits under Section 407 have been provided to all unemployed fathers who meet the statutory and regulatory requirements, regardless of whether the father was actually the principal wage earner or not. Therefore, it is doubtful that, without specific legislation, HEW can take the position that the unemployed parent who is not the primary wage earner is ineligible for benefits. Our Regional Attorney is of the opinion that under the Court's two Orders, AFDC-U benefits must be extended to families in which the mother is unemployed on the same basis as they are granted to families with unemployed fathers.

Our Regional Attorney also points out that the Supreme Court in *Batterton v. Francis*, 97 S. Ct. 2399 (1977), emphasized that Congress expressly delegated to the Secretary the power to prescribe standards for determining what constitutes "unemployment" for purposes of AFDC-UF eligibility. The Secretary's regulations nowhere give states discretion to define unemployment in terms of a principal wage earner, nor more specifically in terms (as your proposed Section 303.01 provides) of the parent whose "earned income or unemployment compensation was greater during the six calendar months preceding the month of application, reapplication or redetermination of eligibility."

Section 303.04(D) of your proposed draft would appear to require WIN registration by the unemployed parent without exceptions. This is contrary to Section 507 of P.L. 94-566 which provides that the exemptions contained in Section 402(a)(19)(A) are applicable to unemployed fathers/parents who apply for benefits under Section 407. Thus, an unemployed father may be exempt from WIN registration as a relative caring for a child under six years of age under Section 402(a)(19)(A)(v). With regard to Section 402(a)(19)(A)(vi), in so far

as this exemption is sex discriminatory and has not been available to individuals receiving benefits under Section 407, our Regional Attorney believes HEW's position should be that this exemption is not now available to unemployed mothers seeking benefits under Section 407. In the *Westcott* case, plaintiff's attorney indicated that the same exemptions should be available to unemployed mothers as are now available to unemployed fathers. Therefore, with regard to WIN registration for unemployed mothers, our Central Office will have to resolve the problem before we can advise you about the acceptance of your proposed Section 303.04(D).

We hope this letter is helpful. We shall advise further as soon as we hear from our Central Office.

Sincerely yours,

CHARLES C. GENTILE  
Acting Assistant Regional  
Commissioner for Family  
Assistance

SUPREME COURT OF THE UNITED STATES

Nos. 78-437 and 78-689

JOSEPH A. CALIFANO, SECRETARY OF HEALTH,  
EDUCATION AND WELFARE, APPELLANT

v.

CINDY WESTCOTT, ET AL.; and

ALEXANDER SHARP, II, ETC., APPELLANTS

v.

CINDY WESTCOTT, ET AL.

APPEALS from the United States District Court for  
the District of Massachusetts.

The statements of jurisdiction in these cases having  
been submitted and considered by the Court, probable  
jurisdiction is noted. The cases are consolidated and a  
total of one hour is allotted for oral argument.

December 11, 1978